

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MARILYN N. WITHROW, DAVID J.
WITHROW, and CHRISTOPHER J.
WITHROW,

Plaintiffs,

vs.

REGIONAL WEST MEDICAL CENTER,
SCOTTS BLUFF COUNTY ADULT
DETENTION CENTER, UNITED STATES
DEPARTMENT OF JUSTICE MARSHAL
SERVICE, STATE OF NEBRASKA, STATE
BOARD OF HEALTH VITAL RECORDS,
NICHOLAS MIZELLE, DEBORAH
MIZELLE, MALLORY MIZELLE, and
MARCI MIZELLE,

Defendants.

8:18CV469

ORDER

Plaintiff filed this suit in the District Court on Scotts Bluff County, Nebraska against multiple defendants, including Regional West Medical Center; Scotts Bluff County Adult Detention Center; United States Department of Justice Marshal Service; State of Nebraska; State Board of Health Vital Records; Nicholas Mizelle; Deborah Mizelle; Mallory Mizelle; and Marci Mizelle. ([Filing No. 1-1.](#)) On October 4, 2018, the case was removed to this Court by Defendant United States Department of Justice Marshal Service. ([Filing No. 1.](#))

On October 27, 2018, Plaintiffs filed a motion for leave to file an amended complaint. ([Filing No. 17.](#)) Defendants United States Department of Justice Marshal Service, Regional West Medical Center, and Scotts Bluff County Adult Detention Center have advised that they do not oppose Plaintiffs' request to file an amended complaint and that they will accept service of the same. ([Filing No. 22.](#)) These defendants request, however, that they be given a uniform deadline to answer or otherwise respond to the amended complaint. ([Filing No. 22.](#)) Specifically, they ask that their answer or response be due within fourteen days of the filing of the amended complaint.

The Court will grant Plaintiffs' request to file an amended complaint. Plaintiffs' amended complaint shall be filed no later than November 20, 2018. The Court will likewise grant Defendants' request for a uniform response deadline. Defendants shall respond to the amended complaint within fourteen days of its filing.

Plaintiffs also filed a motion to respond to Nicholas and Deborah Mizelle's answer. ([Filing No. 20](#).) It is unclear whether Nicholas and Deborah Mizelle actually filed an answer while the matter was pending in state court. However, Nicholas and Deborah Mizelle have now filed a motion to dismiss ([Filing No. 23](#)). Therefore, Plaintiffs' motion to respond to Nicholas and Deborah Mizelle's answer will be denied as moot.

Finally, Plaintiffs filed a motion requesting that the Court appoint a U.S. Marshal to serve Defendants Mallory Mizelle and Marci Mizelle. ([Filing No. 19](#).) Plaintiffs contend that, despite multiple attempts, they have been unable to serve these individuals. This request will be denied. Plaintiffs are not proceeding in forma pauperis, and neither Plaintiff is a seaman under 28 U.S.C. § 1916. *See* [Fed. R. Civ. P. 4](#). Moreover, the United States Department of Justice Marshal Service is a defendant in this action.

Accordingly,

IT IS ORDERED:

1. Plaintiffs' motion to file an amended complaint ([Filing No. 17](#)) is granted. Plaintiffs shall file their amended complaint by November 20, 2018.

2. Defendants' Joint Motion to Request Uniform Response Deadline ([Filing No. 22](#)) is granted. Defendants United States Department of Justice Marshal Service, Regional West Medical Center, and Scotts Bluff County Adult Detention Center shall respond to the amended complaint within fourteen days of its filing.

3. Plaintiffs' motion to respond to Nicholas and Deborah Mizelle's answer ([Filing No. 20](#)) is denied as moot.

4. Plaintiffs' request for Marshal service ([Filing No. 19](#)) is denied.

5. The Clerk of Court is directed to mail a copy of this Order to Plaintiffs at their addresses of record.

Dated this 5th day of November, 2018.

BY THE COURT:

s/ Susan M. Bazis
United States Magistrate Judge